

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1385 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

MOHANLAL MANCHHARAM BENGALI

Versus

KULDIPSINH NIRMALSINH SARDAR

Appearance:

MR SH SANJANWALA for Petitioners
NOTICE UNSERVED for Respondent No. 1
MR SB VAKIL for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE K.M.MEHTA

Date of decision: 17/08/2000

ORAL JUDGEMENT (Per J.N. Bhatt, J)

Before the commencement of the hearing, it was stated that appellant No. 1 father of the deceased being original claimant No. 1, had expired on 15.9.1991. Therefore his name is sought to be deleted by the learned advocate for the appellants and we have permitted, accordingly. Since appellant No. 2 is the old mother being original claimant No. 2, she would be entitled to compensation as a sole claimant.

2. Unfortunate parents, who have been in the December days of life awaiting the final outcome, despite lapse of 1 1/2 decades from the date of mishap and resultant claim of the claim made on account of unfortunate, untimely, demise of their earning, unmarried son aged 28 years whose life was cut short, at the cruel hands of the providence in a road accident, who were the original appellants before us in this appeal, now mother is the sole appellant, under Section 110D of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Old Act'), challenging the meagre, sundry, petty, unrealistic and insignificant, consolidated amount of Rs. 31,500/awarded by the Tribunal in MACP No. 572 of 1982 in a common judgement rendered, on 21.4.1985, by the Motor Accident Claims Tribunal (Main), Surat. What a mockery of system? Well, let us come main route.

3. Deceased Kaushik Mohanlal son of the appellants original claimants was travelling in metador-tempo bearing registration No. GRO 5506 driven by deceased driver Gopalbhai Kantilal in course of his service-tour from Baroda to Bombay, who knew it would be a last voyage?. The deceased was working in Jyoti Limited in Energy Division, at Baroda. Metador-tempo was hired by the employer of the deceased. It was proceeding towards Bombay side from Baroda. The deceased was deputed by the employer for the purpose of erection of plant. One Ratansinh was, also, travelling in the said tempo on the day of accident. The accident occurred, on 13.5.1982.

4. When the tempo reached near village Palsana, at about 1.30 a.m., on 14.5.1982, one truck bearing registration GRB 3238 coming with the excessive speed from the opposite direction, dashed against the tempo, violently, as a result of which son of the original claimants Kaushik Mohanlal, Gopalbhai Kantilal and Ratansinh sustained serious injuries and they succumbed to the same. The deceased died, instantaneously, as he was thrown out of the tempo along with the driver on account of violent impact of the on-coming speeding truck. It has been alleged that the driver of the truck

was rash and negligent and responsible for the accident. Original opponent No. 1, was driver of the truck owned by respondent No. 2 insured with respondent No.3. Three claim petitions came to be filed before the Motor Accident Claims Tribunal (Main), Surat, bearing MACP No. 572/1982, 591/1981 and 177/1983 by the heirs and legal representatives of the deceased persons.

5. MACP No. 572 of 1982 was filed by the appellants original claimants parents of the deceased Kaushik, invoking aid of the provisions of Section 110D of the Old Act claiming award of compensation in the sum of Rs. 5 lakhs from all the opponents. All the three claim petitions were resisted by the opponents. They were consolidated. Common evidence was led in MACP No. 572 of 1982 and the Tribunal recorded common judgement, whereby, the parents of the deceased Kaushik, appellants before us, came to be awarded total amount of Rs.31,500/- with interest only at the rate of 6% per annum from the date of application till payment with proportionate cost against respondent Nos. 2, 3 and 4 being original opponent Nos. 2, 3 and 4 since original opponent No. 1 came to be deleted being the driver and not a necessary party.

6. Being dissatisfied by the paltry quantum of compensation awarded by the Tribunal, the original claimants - parents of the deceased Kaushik came with this appeal under Section 110D of old M.V. Act claiming additional amount of Rs. 2 lakhs by way of compensation for the premature death of young, dynamic and promising son.

7. We dispassionately examined the testimonial conclusion and the documentary evidence, the impugned award and the submission raised before us and we have found that the amount awarded by the Tribunal is, inordinately and grossly, inadequate. Therefore, it is required to be, properly, upwardly, revised in light of the facts of the case of M.A.C.P. No. 572 of 1982 and the material, relevant principles of Law of Tort governing the award of compensation.

8. Needless to state that the amount of compensation is required to be assessed generally under two heads, namely: (1) loss of prospective earnings resulted into dependency loss and (2) loss to the estate. The main anxiety and the desideratum of the concept of compensation under the M.V. Act is to see that eligible claimants are placed in the same financial position in what they would have been as far as possible in terms of

money, had there been no loss of life. In case of earning member of the family, the income of the deceased at the relevant time and the prospective earnings ought to be examined. Ordinarily, in case of married person when the claimants are widow and children, the amount of 1/3rd is deducted from the total annual net earnings whereas in case of unmarried earning person in a road accident and when the claimants are parents the loss of dependency to the deceased is required to be ascertained. In other words, the only dependency value of the deceased to the claimants is to be worked out which is required to be multiplied by appropriate multipliers in the light of the given case.

In the present case, the Tribunal has committed a serious error in arriving at a meagre multiplicand even if the multiplier adopted is not seriously considered and revised. The entire approach of the Tribunal in awarding only an amount of Rs. 31,500/against the total claim of Rs. 5 lakhs made by the parents for the premature demise of their young, promising, dynamic, earning, son working as an officer in a known company is not only conservative, unreasonable, but with due respect, is perverse. Certain observations are also unwarranted. For example, it is observed that the plot purchased by the deceased in G.I.D.C. Estate, at Billimora, for starting his own independent venture by the deceased is, now, acquired by the parents in legacy on account of cutting short of the life of the son. Such observation, in our opinion, is not relevant and, totally, unwarranted. Be it as it may, the quantification of damages arrived at by the Tribunal in assessing dependency value is not only unjustified but is fully unrealistic.

9. The following aspects which have emerged unquestionably from the record may be articulated, at this stage.

(i) Deceased Kaushik was working with Jyoti Limited Company as an Executive and on the day of the accident he was en route from Vadodara to Mumbai in a tempo in course of his employment for the purpose of erection of a plant of Jyoti Limited, employer of the deceased.

(ii) The deceased was aged about 28 years, he had passed his Diploma in Mechanical Engineering. He was a promising person who was at the relevant point of time earning an amount of Rs. 900/- per month as an Executive in Jyoti Limited Company, at Vadodara. He was, over and above the said amount, getting bonus of 13.33% per annum.

The employer was also giving him in the contributory fund a contribution of 8.33% of the salary. Unfortunately, the annual salary considered by the Tribunal is oblivious of this aspect of 20% benefit which is established from the evidence of the Assistant Officer of Personnel Department of Jyoti Limited Mr. K.R. Patel's examination, at Exh. 64. Again, Exh. 66, is the last salary certificate and, Exh. 67, is a further certificate issued by the employer. The Tribunal has also failed to consider the prospective earnings of the deceased which has resulted into miscarriage of justice.

(iii) The deceased had already purchased a plot in G.I.D.C. in Billimora as he intended to commence his own industrial venture but for cutting short of his life, prematurely, he would have started his industrial enterprise as he was a Mechanical Engineer (Diploma). This aspect is, also, not correctly examined by the Tribunal.

10. It appears that the Tribunal was in a confusion in making assessment of the dependency value of the deceased to the parents. When we examined paragraphs 23, 24 and 25 of the common judgement, we have not been able to apprehend as to how the amount of Rs. 2400/- assessed as contribution of the deceased to the parents for four years and an amount of Rs. 900/- contribution per annum for remaining period of eight years. This is nothing but an utter confusion. An amount of Rs. 5000/- awarded under the head of loss of expectation of life is also very low and conservative. Rate of interest awarded is also 6% per annum. In short, the assessment of the dependency or the contribution of the deceased to the parents even in terms of the prevailing earning of the deceased is, in our opinion, totally, erroneous. The mother and father of the deceased were aged 52 years and 59 years respectively at the time of unfortunate demise of Kaushik. The Tribunal has taken 12 multipliers.

11. Since more than 18 years have elapsed since the date of loss of a young, promising son and when the parents being in the December days of life, in the light of evidence on record and the facts and circumstances coupled with proposition of law in grant of awarding compensation, in a case of young, promising, earning son, we have no hesitation in finding that at least surviving aged mother, now, should be awarded additional amount of compensation of Rs. 75,000/- by way of compensation with running interest at the rate of 15% from the date of application till the date of payment. Thus, the rate of interest is revised from 6% to 15% on full amount of

compensation. However, if the amount is deposited by the Insurance Company within a period of two months from today, rate of interest will be 12% per annum. In case of failure to pay or deposit within that period, the Insurance Company shall pay interest at the rate of 15% per annum from the date of application till payment.

12. In the result, the appeal is partly allowed. The impugned judgement and the resultant award shall stand modified. Additional amount of Rs. 75,000/- with interest as stated above, over and above an amount of Rs. 31,500/-, is awarded by way of compensation for the premature demise of son of the appellant original claimant No. 2 - mother. The award shall stand modified accordingly.

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